

REMARKS

Applicant has amended the specification to indicate that the present application is a continuation application of pending U.S. Patent Application No. 09/364,824 filed on July 30, 1999. Claims 1-67 are now pending in the present application. The independent claims are Claims 1, 11, 19, 28, 36, 47, 55, 60, 66 and 67. The Applicant notes that the parent application (U.S. Application Serial No. 09/364,824) is currently in After-Final status and that a petition for a two month extension of time was purchased today (March 12, 2004) in order to maintain copendency between the parent application and the continuation application filed herewith.

INFORMATION DISCLOSURE STATEMENT

Applicant submits herewith Information Disclosure Statements (IDS's) and completed PTO-1449 forms in connection with the parent application. These PTO-1449 forms list the references cited in the parent case. The Applicant reminds the Examiner that copies of these references are not necessary since the present application claims priority Under 35 U.S.C. 120 to the parent case. See 37 C.F.R. § 1.98(d).

**STATEMENT REGARDING REFERENCE APPLIED IN PARENT APPLICATION
AND STATEMENT REGARDING COMMON OWNERSHIP**

The present continuation application has been filed with the intent to remove a patent reference from consideration by the Examiner that was made in the parent case (U.S. Application Serial No. 09/364,824). The patent reference at issue is United States Patent No. 6,025,841 issued in the name of Finkelstein et al on February 15, 2000 (hereinafter, "the Finkelstein et al reference."). The Applicant respectfully submits that this reference is disqualified as prior art under 35 U.S.C. 103(c) because the subject matter of the Finkelstein reference and the claimed invention of the present application were commonly owned.

The Applicant reminds the Examiner that M.P.E.P. Section 706.02(l), p. 700-50 (8th Ed., Rev. 1, Feb. 2003) states the following:

"706.02(l)(1) Rejections Under 35 U.S.C. 102(e)/103; 35 U.S.C. 103(c) [R-1] 35 U.S.C. 103. Conditions for patentability; non-obvious subject matter.

'(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Effective November 29, 1999, subject matter which was prior art under former 35 U.S.C. 103 via 35 U.S.C. 102(e) is now disqualified as prior art against the claimed invention if that subject matter and the claimed invention "were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." This change to 35 U.S.C. 103(c) applies to all utility, design and plant patent applications filed on or after November 29, 1999, including continuing applications filed under 37 CFR 1.53(b), continued prosecution application filed under 37 CFR 1.53(d), and reissues. The amendment to 35 U.S.C. 103(c) does not affect any application filed before November 29, 1999, a request for examination under 37 CFR 1.129 of such an application, nor a request for continued examination under 37 CFR 1.114 of such an application. >The Intellectual Property and High Technology Technical Amendments Act of 2002 (Pub. L. 107-273, 116 Stat. 1758 (2002) did not further amend the exclusion under 35 U.S.C.103(c) as amended on November 29, 1999.<

The mere filing of a continuing application on or after November 29, 1999, with the required evidence of common ownership, will serve to exclude commonly owned 35 U.S.C. 102(e) prior art that was applied, or could have been applied, in a rejection under 35 U.S.C. 103 in the parent application...
[Emphasis Supplied.]

The Applicant also directs the Examiner to M.P.E.P. Section 706.02(l)(2) pp. 700-53 - 700-54 (8th Ed., Rev. 1, Feb. 2003) which states the following:

"II. EVIDENCE REQUIRED TO ESTABLISH COMMON OWNERSHIP...

...The statement concerning common ownership should be clear and conspicuous (e.g., on a separate piece of paper or in a separately labeled section) in order to ensure that the examiner quickly notices the statement. Applicants may, but are not required to, submit further evidence, such as assignment records, affidavits or declarations by the common owner, or court decisions, in addition to the above-mentioned statement concerning common ownership.

For example, an attorney or agent of record receives an Office action for Application X in which all the claims are rejected under 35 U.S.C. 103(a) using Patent A in view of Patent B wherein Patent A is only available as prior art under 35 U.S.C. 102(e), (f), and/or (g). In her response to the Office action, the attorney or agent of record for Application X states, in a clear and conspicuous manner, that:

'Application X and Patent A were, at the time the invention of Application X was made, owned by Company Z.'

This statement alone is sufficient evidence to disqualify Patent A from being used in a rejection under 35 U.S.C. 103(a) against the claims of Application X." [Emphasis Supplied.]

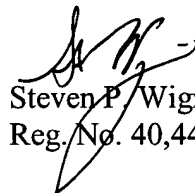
In light of the above cited M.P.E.P. sections, the undersigned attorney submits that the present application filed herewith and United States Patent No. 6,025,841 issued to Finkelstein were, at the time the present application was made, owned by Microsoft Corporation, the assignee of record for both this continuation application and the Finkelstein patent.

Therefore, the Applicant has established that this Finkelstein reference is disqualified as prior art under 35 U.S.C. 103(c). Consideration and acknowledgement by the Examiner of this disqualification are respectfully requested.

CONCLUSION

Applicant respectfully submits that the above-styled continuation patent application, as amended, is in condition for examination and requests such action. If any issues remain that may be resolved by telephone, the Examiner is requested to call the undersigned at 404.572.2884.

Respectfully submitted,


Steven P. Wigmore
Reg. No. 40,447

King & Spalding
45th Floor
191 Peachtree Street, N.E.
Atlanta, Georgia 30303
404.572.4600
K&S Docket: 06576.105021 (Cont)